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An Act To Amend Licensing and Certification Requirements

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there is a need to amend the licensing laws of health care facilities and long-term care facilities for children and adults to permit sanctions to be levied and to protect the people of Maine; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §200-H, sub-§1, ¶C, as enacted by PL 2003, c. 433, §1 and amended by c. 689, Pt. B, §6, is further amended to read:

C. The Director of the Division of Licensing and ~~Certification~~Regulatory Services within the Department of Health and Human Services, ~~Bureau of Medical Services~~, ex officio;

Sec. 2. 22 MRSA §1717, sub-§1, ¶C, as amended by PL 2003, c. 673, Pt. NN, §1, is further amended to read:

C. "Personal care agency" means a business entity or subsidiary of a business entity that is not otherwise licensed by the Division of Licensing and ~~Certification~~Regulatory Services and that hires and employs unlicensed assistive personnel to provide assistance with activities of daily living and related tasks to individuals in the places in which they reside, either permanently or temporarily. An individual who hires and employs unlicensed assistive personnel to provide care for that individual is not a personal care agency, except when permitted by rule of the department.

Sec. 3. 22 MRSA §1717, sub-§4, as repealed and replaced by PL 2003, c. 634, §2, is amended to read:

4. Penalties. The following penalties apply to violations of this section.

A. A person who operates a personal care agency without registering with the department as required by subsection 2 commits a civil violation for which a fine of not less than \$500 per day of operation but not more than \$10,000 may be adjudged. Each day of violation constitutes a separate offense.

B. A person who operates a personal care agency in violation of the employment prohibitions in subsection 3 commits a civil violation for which a fine of not less than \$500 per day of operation in violation but not more than \$10,000 per day may be adjudged, beginning on the first day that a violation occurs. Each day of violation constitutes a separate offense.

Sec. 4. 22 MRSA §1717, sub-§5 is enacted to read:

5. Injunctive relief. Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of this subtitle.

Sec. 5. 22 MRSA §1717, sub-§6 is enacted to read:

6. Enforcement. The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of this subtitle.

Sec. 6. 22 MRSA §1717, sub-§7 is enacted to read:

7. Jurisdiction. The District Court has jurisdiction pursuant to Title 4, section 152 for violations of this subtitle.

Sec. 7. 22 MRSA §1717, sub-§8 is enacted to read:

8. Burden of proof. The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of this subtitle occurred.

Sec. 8. 22 MRSA §1717, sub-§9 is enacted to read:

9. Right of entry. This subsection governs the department's right of entry.

A. An application for registration of a personal care agency constitutes permission for entry and inspection to verify compliance with applicable laws and rules.

B. The department has the right to enter and inspect the premises of a personal care agency registered by the department at a reasonable time and, upon demand, has the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with applicable laws and rules.

C. To inspect a personal care agency that the department knows or believes is being operated without being registered, the department may enter only with the permission of the owner or person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection.

Sec. 9. 22 MRSA §1717, sub-§10 is enacted to read:

10. Administrative inspection warrant. The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unregistered personal care agency with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with this subtitle. The right of entry and inspection extends to all premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without being registered. The administrative inspection warrant must also authorize the department to interview an individual who may be an employee of the unregistered personal care agency or a person with knowledge of the unregistered personal care agency.

Sec. 10. 22 MRSA §1717, sub-§11 is enacted to read:

11. Violation of injunction. A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under this section shall pay to the State a fine of not less than \$500 nor more than \$10,000 for each violation. Each day of violation constitutes a separate offense. In any action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under this section, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

In an action under this section, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.

Sec. 11. 22 MRSA §1717, sub-§12 is enacted to read:

12. Suspension or revocation of registration. A personal care agency found to be in violation of this section may have its registration to operate as a personal care agency suspended or revoked. The department may file a complaint with the District Court requesting suspension or revocation of a registration to operate a personal care agency.

Sec. 12. 22 MRSA §1717, sub-§13 is enacted to read:

13. Rules. The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 13. 22 MRSA §1812-H, as amended by PL 2001, c. 600, §1, is further amended to read:

§ 1812-H. Participation in the Medicare health insurance for the aged program

1. Medicare. Any nursing facility that participates in the Medicaid program must participate in the Medicare health insurance for the aged program as a skilled nursing facility.

2. Compliance. Any nursing facility required to participate in the Medicare health insurance for the aged program shall:

- A. File an application to become a Medicare provider by January 1, 1994;
- B. Follow required federal procedures for certification and become certified within 90 days of the department's recommendation for certification;
- C. Submit an annual application for Medicare participation at the same time applications for licensure and Medicaid certification are due; and

D. Participate in the Medicare program by billing Medicare for care provided to eligible recipients prior to billing Medicaid.

2-A. Rules. The department shall adopt rules to implement this section. The rules must consider the unique needs of different parts of the State. Nursing facilities in different parts of the State may be required to certify different numbers or percentages of beds depending on the number of Medicare recipients in those areas, the number of patients in hospitals who are waiting for nursing facility admission and other relevant demographic information. Nothing in this subsection prohibits the department from requiring all nursing facilities to certify all of their beds as Medicare skilled nursing facility beds.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

2-B. Implementation. Notwithstanding any provision of this section to the contrary, a nursing facility may decline to admit a prospective resident after an evaluation of the person's clinical condition and related care needs and a determination that the facility lacks qualified staff to meet the level of care required for that person. A nursing facility is not subject to penalty or sanction for declining to admit a prospective resident under this subsection. Nothing in this subsection affects the obligation of a nursing facility to provide care specific to the needs of residents of the facility.

3. Sanctions. Failure to comply with any of the provisions listed in this section may result in the imposition of a penalty. The department may impose a penalty of not less than \$100 per bed per day and not more than \$5,000 per day for failure to comply with any of these provisions. This penalty must be imposed for each day a facility fails to comply with subsection 2, paragraph D. A repeated failure to comply with ~~any~~ a provision results in fines of not less than \$200 per bed per day and not more than \$10,000 per day. The imposition and collection of these penalties are governed by section 7946.

Sec. 14. 22 MRSA §1817, as corrected by RR 1999, c. 2, §24 and affected by §25, is repealed and the following enacted in its place:

§ 1817. Issuance of licenses

The department is authorized to issue licenses to operate hospitals, sanatoriums, convalescent homes, rest homes, nursing homes, ambulatory surgical facilities and other related institutions that, after inspection, are found to comply with this chapter and any rules adopted by the department. An initial license may be issued for up to 12 months. A license may be renewed for up to 24 months. The fee for this temporary or conditional license is \$15 and is payable at the time of issuance of the license regardless of the term. When an institution, upon inspection by the department, is found not to meet all requirements of this chapter or department rules, the department is authorized to issue either:

1. Temporary license. A temporary license for a specified period not to exceed 90 days, during which time corrections specified by the department must be made by the institution for compliance with this chapter and departmental rules, if in the judgment of the commissioner the best interests of the public will be so served; or

2. Conditional license. A conditional license setting forth conditions that must be met by the institution to the satisfaction of the department.

Failure of the institution to meet any of the department's conditions immediately voids the temporary or conditional license by written notice by the department to the licensee or, if the licensee cannot be reached for personal service, by notice left at the licensed premises. A new application for a regular license may be considered by the department if, when and after the conditions set forth by the department at the time of the issuance of this temporary or conditional license have been met and satisfactory evidence of this fact has been furnished to the department. The department may amend, modify or refuse to renew a license in conformity with the Maine Administrative Procedure Act, or file a complaint with the District Court requesting suspension or revocation of any license on any of the following grounds: violation of this chapter or the rules issued pursuant to this chapter; permitting, aiding or abetting the commission of any illegal act in that institution; or conduct of practices detrimental to the welfare of a patient. Whenever, on inspection by the department, conditions are found to exist that violate this chapter or department rules issued pursuant to this chapter that, in the opinion of the commissioner, immediately endanger the health or safety of patients in an institution or create an emergency, the department by its duly authorized agents may, under the emergency provisions of Title 4, section 184, subsection 6, request that the District Court suspend or revoke the license. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 15. 22 MRSA §7702-B is enacted to read:

§ 7702-B. Operating without a license or certificate; violations; penalties

1. License or certificate required. A person, firm, partnership, association, corporation or other entity may not, without first obtaining a license:

- A. Manage or operate a long-term care facility as defined in chapter 1666-B;
- B. Operate a child care facility as defined in section 8301-A, subsection 1-A, paragraph B; or
- C. Operate as a family child care provider as defined in section 8301-A, subsection 1-A, paragraph C.

2. Civil penalties. A person, firm, partnership, association, corporation or other entity who violates subsection 1 commits a civil violation and is subject to a civil penalty of not less than \$500 nor more than \$10,000 per day. Each day of violation constitutes a separate offense.

3. Injunctive relief. Notwithstanding any other remedies provided by law, the Office of the Attorney General may seek an injunction to require compliance with the provisions of subsection 1.

4. Enforcement. The Office of the Attorney General may file a complaint with the District Court seeking civil penalties or injunctive relief or both for violations of subsection 1.

5. Jurisdiction. The District Court has jurisdiction pursuant to Title 4, section 152 for violations of subsection 1.

6. Burden of proof. The burden is on the department to prove, by a preponderance of the evidence, that the alleged violations of subsection 1 occurred.

7. Right of entry. To inspect the premises of a long-term care facility, child care facility or family child care provider that the department knows or believes is being operated without a license or certificate, the department may enter only with the permission of the owner or person in charge or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court, authorizing entry and inspection.

8. Administrative inspection warrant. The department and a duly designated officer or employee of the department have the right to enter upon and into the premises of an unlicensed long-term care facility or child care facility or an uncertified family child care provider with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court at a reasonable time and, upon demand, have the right to inspect and copy any books, accounts, papers, records and other documents in order to determine the state of compliance with subsection 1. The right of entry and inspection extends to all premises and documents of a person, firm, partnership, association, corporation or other entity that the department has reason to believe is operating without a license or a certificate. The administrative inspection warrant must also authorize the department to interview an individual who may be a resident, attendee or employee of the unlicensed long-term care facility or child care facility or an uncertified family child care provider, or a person with knowledge of the unlicensed long-term care facility or child care facility or an uncertified family child care provider.

9. Violation of injunction. A person, firm, partnership, association, corporation or other entity that violates the terms of an injunction issued under this section shall pay to the State a fine of not less than \$500 nor more than \$10,000 for each violation. Each day of violation constitutes a separate offense. In an action brought by the Office of the Attorney General against a person, firm, partnership, association, corporation or other entity for violating the terms of an injunction under this section, the District Court may make the necessary orders or judgments regarding violation of the terms of the injunction.

In an action under this section, when a permanent injunction has been issued, the District Court may order the person, firm, partnership, association, corporation or other entity against which the permanent injunction is issued to pay to the General Fund the costs of the investigation of that person, firm, partnership, association, corporation or other entity by the Office of the Attorney General and the costs of suit, including attorney's fees.

10. Rules. The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 16. 22 MRSA §7703, sub-§2, as amended by PL 2001, c. 596, Pt. B, §11 and affected by §25, is further amended to read:

2. Confidential information. Except as provided in subsections 3 and 4, confidential information may not be released without a court order or a written release from the person about whom the confidential information has been requested. The following information is confidential:

- A. ~~Any information which~~Information that identifies, directly or indirectly, a recipient of services of the facility, a client of the facility or ~~his~~the client's family or custodian, except ~~wherewhen~~ the family member or custodian is an owner or operator of the facility;
- B. Notwithstanding sections 3474 and 4008, any information gathered in the course of an investigation of neglect or abuse, except a statement indicating whether or not a report of abuse or neglect has been received, the nature of the alleged abuse or neglect and the conclusion reached by the department, if any;
- C. ~~Any information~~Information that identifies, directly or indirectly, a reference, complainant or reporter of suspected abuse or neglect;
- D. ~~Any information~~Information pertaining to the adoption of an individual;
- E. ~~Any information~~Information about the private life of ~~any~~a person, other than an owner, operator or employee of a facility, in which there is no legitimate public interest and ~~which~~that would be offensive to a reasonable person, if disclosed, except as provided in paragraph F; ~~and~~
- F. ~~Any information~~Information about the private life of ~~any~~a person who has applied for a license or approval or is or has been licensed or approved as an adult foster home, licensed pursuant to chapter 1663, and family foster home as defined in section 8101, subsection 3, in which there is no legitimate public interest and ~~which~~that would be offensive to a reasonable person, if disclosed; ~~and~~
- G. Information that identifies, directly or indirectly, a reference, complainant or reporter of suspected licensing violations.

Within the department, confidential information ~~shall~~must be available to and used by appropriate departmental personnel and legal counsel in carrying out their various functions. Nothing in this section may prevent the release of statistical information regarding the population of the facility by diagnosis or other classification, ~~provided that~~as long as it does not directly or indirectly identify the clients or recipients of services of the facility.

Sec. 17. 22 MRSA §7703, sub-§6 is enacted to read:

6. Rules. The department may adopt rules necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 18. 22 MRSA §7802, sub-§2, ¶B, as amended by PL 2005, c. 640, §1, is further amended to read:

B. The terms of full licenses or approvals are as follows.

- (1) Except as provided in subparagraphs (2) to ~~(6)~~(7), the term of all full licenses and approvals issued pursuant to this chapter is for one year or the remaining period of a conditional or provisional license that has been issued for less than one year.

(2) The term of a residential child care facility license is for 2 years.

(3) The term of a drug treatment center license may be for either one or 2 years.

(4) The term of a family foster home or specialized foster home license is for 2 years.

(5) The term of a child care facility license issued under section 8301-A, subsection 2 is for 2 years.

(6) The term of a home day care certificate issued under section 8301-A, subsection 3 is for 2 years.

(7) The term of an adult day care program license pursuant to chapter 1679 is for either one or 2 years at the discretion of the department.

Sec. 19. 22 MRSA §7802, sub-§6 is enacted to read:

6. Time limit on reapplication after denial or revocation. The following time limit applies to a reapplication after denial or revocation.

A. When a license or certificate for a child care facility or a family child care provider has been denied or revoked on one occasion, the applicant or licensee may not reapply for a license or certificate for a child care facility or a family child care provider for a period of one year from the effective date of the denial or revocation decision if not appealed, or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later.

B. If a license or certificate for a child care facility or a family child care provider has been denied or revoked on 2 occasions, the applicant or licensee may not reapply for a license or certificate for a child care facility or a family child care provider for a period of 2 years from the effective date of the second denial or revocation decision if the decision is not appealed or, if appealed, from the effective date of the commissioner's final decision or the reviewing court's order, whichever is later.

C. If a license or certificate for a child care facility or a family child care provider has been denied or revoked on 3 occasions, the applicant or licensee may not receive another license or certificate for the care of children.

Sec. 20. 22 MRSA §7802, sub-§7 is enacted to read:

7. Rules. The department may adopt rules necessary to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 21. 22 MRSA §7944, sub-§1, as amended by PL 2003, c. 634, §9, is further amended to read:

1. Authorization. The department is authorized to impose one or more of the following sanctions when a violation of this chapter occurs and the department determines that a sanction is necessary and appropriate to ensure compliance with state licensing rules or to protect the residents of long-term care facilities as defined in section 7852 or the general public.

A. The long-term care facility may be directed to stop all new admissions regardless of payment source or to admit only those residents the department approves until such time as it is determined that corrective action has been taken.

B. The department may direct a long-term care facility to correct any deficiencies in a manner and within a time frame that the department determines is are appropriate to ensure compliance with state licensing rules or to protect the residents of the long-term care facility.

C. The department may impose a penalty upon a long-term care facility ~~for operating without a license or for a violation of this chapter. Each day of violation constitutes a separate offense.~~ The minimum penalty for operating without a license is \$500 per day. A penalty or a combination of penalties imposed on a facility may not be greater than a sum equal to \$10 times the total number of residents residing in the facility per violation, up to a maximum of \$10,000 for each instance in which the department issues a statement of deficiency to a skilled nursing or intermediate care long-term care facility, ~~or \$6 times the total number of residents residing in the facility per violation, up to a maximum of \$6,000 in each instance in which the department issues a statement of deficiency to any assisted living program or residential care facility.~~

D. The department may direct a long-term care facility to transfer residents in that facility to other locations in an emergency that threatens the health, safety or welfare of the residents of the facility and shall assist the facility in making arrangements for transfers.

The department may adopt rules as necessary for the implementation of this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 22. 22 MRSA §8101, sub-§2, as enacted by PL 1981, c. 260, §4, is amended to read:

2. Emergency shelter. "Emergency shelter" means a children's home ~~which~~that operates to receive children 24 hours a day and ~~which~~that limits placement to 30 consecutive days or less. ~~For purposes of this section, the definition of "children" includes a person under the age of 21 years of age.~~ "Emergency shelter" ~~shall~~does not mean a family foster home or specialized children's home and, if a service of a residential child care facility, ~~shall be~~is restricted to a designated physical area of the facility.

Sec. 23. 22 MRSA §8101, sub-§4, as enacted by PL 1981, c. 260, §4, is amended to read:

4. Residential child care facility. "Residential child care facility" means ~~any~~a children's home ~~which~~that provides board and care for one or more children on a regular, 24-hour a day, residential basis. For purposes of this section, the definition of "children" includes a person under 21 years of age. A residential child care facility does not mean a family foster home, a specialized children's home or an emergency shelter facility. The term includes, but is not limited to:

- A. ~~A residential care facility under Title 20, section 3125, subsection 5;~~
- B. An approved treatment facility under Title 5, section 710320003, subsection 4-3;
- C. A drug treatment center under section 8001; and
- D. ~~A community residence under Title 34, section 2105; and~~
- E. A residential facility under Title 34 34-B, section 2142, subsection 8sections 1431 and 5601.

Sec. 24. 22 MRSA §8101, sub-§4-A, as enacted by PL 1989, c. 270, §15, is amended to read:

4-A. Shelter for homeless children. "Shelter for homeless children" means an emergency shelter designed to provide for the overnight lodging and supervision of children 10 years of age or older for no more than 30 consecutive overnights. For purposes of this section, the definition of "children" includes a person under 21 years of age.

Sec. 25. 22 MRSA §8101, sub-§4-B, as enacted by PL 1995, c. 301, §1, is amended to read:

4-B. Residential treatment facility with secure capacity. "Residential treatment facility with secure capacity" means a children's home that provides a mental health intensive treatment program to a child whose diagnostic assessment indicates that the persistent pattern of the child's mental health presents a likely threat of harm to self or others and requires treatment in a setting that prevents the child from leaving the program. For purposes of this section, the definition of "children" includes a person under 21 years of age.

Sec. 26. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "Division of Licensing and Certification" appear or reference is made to that entity within the Department of Health and Human Services or to those words, they are amended to read or mean "Division of Licensing and Regulatory Services" or "division" within the Department of Health and Human Services, and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. 27. Rules. The Department of Health and Human Services may adopt rules to implement the changes made in the Maine Revised Statutes, Title 22, section 8101 by this Act. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill makes the following changes to licensing and certification requirements of Department of Health and Human Services.

1. It creates penalties, including injunctive relief, for operating an unregistered personal care agency.

2. The bill creates a cap on civil monetary penalties that the Department of Health and Human Services may impose on unlicensed, uncertified or unregistered entities. This responds to a decision of the Maine Superior Court.

3. The bill creates a maximum 2-year license renewal term for hospitals, nursing facilities, ambulatory surgical facilities and related institutions. An initial license may be issued for up to 12 months.

4. It creates penalties, including injunctive relief, for operating without a license or certificate by a long-term care facility, a child care facility, and a family child care provider

5. The bill places a time limit on reapplication after denial or revocation of a license for a child care facility or revocation of a certificate for a family child care provider.

6. The bill defines children in the Department of Health and Human Services laws governing facilities for children and adults as being under 21 years of age to make the provisions consistent with those governing MaineCare, the department's Office of Child and Family Services and special education.